

Draft Policy Statement on Confidentiality of Indian Sacred Sites

Federal agencies and their components have a trust responsibility to American Indian and Alaska Native communities to develop guidance regarding the confidentiality and protection of Indian Sacred Sites. When working with tribes to determine whether culturally sensitive locations may be affected by federal actions, federal agencies shall respect tribal desires that information about such locations be kept confidential. Many Indian tribes have belief systems that require information about the location, the significance, and even the existence of traditional religious and cultural properties and places, to not be divulged. It is thus important and necessary for agencies and their components to respect and recognize tribal ownership of this information. In order to provide American Indian and Alaska Native religious practitioners the fullest possible access to and use of sacred sites, and to provide Indian sacred sites the highest possible level of protection, federal agencies are charged with carrying out the provisions of Executive Order 13007 in concert with other pertinent laws, regulations, policies, and guidance. It is important for federal agencies to recognize the applicability of existing laws and regulations that were not enacted to solely apply to indigenous communities.

Section 304 of the National Historic Preservation Act (NHPA) provides guidance on limiting public access on the “location, character and ownership” of historic resources. Section 9 of the Archaeological Resources Protection Act (ARPA) offers similar guidance on limiting information on the “nature and location” of archaeological resources. If it can be demonstrated that sacred sites are associated with and contribute to the understanding of historic properties or archaeological resources, then NHPA and ARPA may offer some protection of information. However, if neither ARPA nor Section 304 of NHPA applies, the agency components may find it impossible to keep information on a site confidential, and should so advise the Tribe or religious

leader prior to recording sensitive information. In addition to the aforementioned authorities, the 2008 Farm Bill provides specific authority to the USDA Forest Service in Section 3056 of the Cultural and Heritage Cooperation Authority (25 USC 32A Section 3056) to protect tribal information from release under the Freedom of Information Act.¹

Given the requirements of the Freedom of Information Act, which provides for public access to Federal records with limited exceptions, agencies should obtain and record information about sacred sites only in the detail needed to justify administrative decisions. For instance, areas that tribes regard as spiritually or culturally significant should be identified only in broad terms, sufficient to alert agencies to an area's significance without recording or revealing sensitive information about tribal religious beliefs or cultural practices. Agency managers should routinely address matters such as: managing visitation in areas where religious activities are likely to occur; placing facilities to avoid imposition on religious activities; and considering any unintended effects that management actions may have on sacred sites, including, but not limited to, impacts on natural resources, air and water quality, noise level and view shed. Agencies shall make every effort to respect any tribe's reluctance to reveal information related to the location of sacred sites if the tribe believes disclosing such information would compromise confidentiality of religious or other cultural practices and sacred places.

¹ This authority refers to nondisclosure of information about resources, cultural items, uses, or activities that have a traditional and cultural purpose (including ceremonial use), or are provided under an express expectation of confidentiality in the context of Forest Service research, with a prospect of limited release in consultation with the Indian tribe.